

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
William F. Lee (*pro hac vice*)  
william.lee@wilmerhale.com  
Louis W. Tompros (*pro hac vice*)  
louis.tompros@wilmerhale.com  
Dominic E. Massa (*pro hac vice*)  
dominic.massa@wilmerhale.com  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Fax: (617) 526-5000

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
Mark D. Selwyn (SBN 244180)  
mark.selwyn@wilmerhale.com  
2600 El Camino Real, Suite 400  
Palo Alto, CA 94306  
Telephone: (650) 858-6000  
Fax: (650) 858-6100

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
Amanda L. Major (*pro hac vice*)  
amanda.major@wilmerhale.com  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Fax: (202) 663-6363

*Attorneys for Defendant Intel Corporation*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

## VLSI TECHNOLOGY, LLC,

Plaintiff,

Y.

## INTEL CORPORATION

Defendant

Case No. 5:17-cv-05671-BLF

**INTEL CORPORATION'S  
ADMINISTRATIVE MOTION FOR  
RELIEF FROM PROTECTIVE ORDER**

1           In accordance with Civil Local Rule 7-11, Intel Corporation (“Intel”) submits this motion for  
 2 an order granting relief under Paragraphs 16, 18, and 43 of the Protective Order in this litigation.

3           Intel and Apple Inc. (“Apple”) filed suit against various defendants, including VLSI  
 4 Technology, LLC (“VLSI”), on November 20, 2019 in *Intel Corp. v. Fortress Investment Group et*  
 5 *al.*, 3:19-cv-07651-EMC (N.D. Cal.) (“Antitrust Litigation”). On August 4, 2020, Apple and Intel  
 6 filed an amended complaint. In their complaint and amended complaint, Apple and Intel are  
 7 challenging the defendants’, including VLSI’s, anticompetitive scheme of acquiring substitute and  
 8 complementary patents in particular markets relating to electronic devices and components or  
 9 software therein and processes used to manufacture them, and then using their aggregated portfolio  
 10 to obtain patent royalties greatly exceeding the value of the alleged inventive contributions of and  
 11 competitive prices for the patents. Apple and Intel have alleged in the Antitrust Litigation that the  
 12 ’303 and ’014 patents asserted in this litigation are those that have been aggregated  
 13 anticompetitively.

14           On January 6, 2021, the district court dismissed Apple and Intel’s amended complaint and  
 15 noted that Apple and Intel “could have . . . asked the courts presiding over the VLSI infringement  
 16 suits against Intel for relief from the protective order so that they could make a filing under seal in  
 17 this case” in order to provide evidence to support these allegations, including about how much VLSI  
 18 “paid to acquire” patents at issue in the markets. 3:19-cv-07651-EMC, ECF No. 230 at 26 n.9. The  
 19 district court further noted “shortcomings” it perceived in Apple and Intel’s allegations about how  
 20 the defendants are alleged to have “extracted supracompetitive royalties,” including that (1) the  
 21 amended complaint “provided no information about, e.g., what these companies [which licensed  
 22 specified patents from Uniloc] paid as part of their settlements with Uniloc,” (2) there are no  
 23 allegations regarding whether the patents identified in the amended complaint “represent the ‘crown  
 24 jewels’ of the field or just a small portion of a large field of substitutes,” and (3) Apple and Intel  
 25 “failed to make allegations tying the pricing differential to aggregation of the patents at issue” in the  
 26 amended complaint. *Id.* at 23-27. The district court granted Apple and Intel leave to file a second  
 27 amended complaint within 30 days, i.e., by February 5, 2021.

1       Apple and Intel intend to overcome these perceived shortcomings in a second amended  
 2 complaint. To support the allegations in that complaint, Intel seeks Court authorization under  
 3 Paragraphs 16, 17 and 43 of the protective order (Dkt. No. 107) in the instant action to file under seal  
 4 in the Antitrust Litigation (1) information describing the historical prices VLSI paid for the '303 and  
 5 '014 patents, such as the purchase price of any patent portfolio encompassing the '303 and/or the  
 6 '014 patents, and (2) information describing the damages demands and royalty estimates regarding  
 7 the value or significance of the '303 and '014 patents that VLSI has put forth in this litigation. In  
 8 particular, Intel requests permission to (1) share on an Outside Counsel Eyes Only basis the  
 9 following information and documents with counsel for Apple and Intel in the Antitrust Litigation  
 10 and (2) for counsel for Apple and Intel in the Antitrust Litigation to file under seal in the Antitrust  
 11 Litigation portions of the following documents and the information contained in them:

12       •       The cost to acquire each of the '303 and '014 patents (derived from a patent-sale  
 13 agreement between NXP and VLSI, and an amendment to that agreement, which VLSI has  
 14 designated OUTSIDE COUNSEL EYES ONLY);

15       •       VLSI's approximate royalty estimates for the '303 and '014 patents (included in  
 16 VLSI's January 14, 2019 Second Supplemental Damages Contentions, which VLSI has designated  
 17 as Confidential to VLSI).

18       *Intel's Request for Relief from the Protective Order Should Be Granted*

19       The Ninth Circuit "strongly favors disclosure to meet the needs of parties in pending  
 20 litigation." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992). When  
 21 evaluating whether to grant relief from a protective order, the court considers "the relevance of the  
 22 protected discovery to the collateral proceedings and its general discoverability therein." *Foltz v.*  
 23 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1132 (9th Cir. 2003). Next, the court considers the  
 24 reliance interest of the party opposed to the relief; however, where a blanket protective order is at  
 25 issue, "any legitimate interest ... can be accommodated by placing [the collateral litigants] under the  
 26 same restrictions on use and disclosure contained in the original protective order." *Id.* at 1133.  
 27 Applying this framework, Intel's limited request should be granted.

1       **First**, the limited information sought is relevant to Intel's allegations that aggregation of  
 2 patents by VLSI and other of the Antitrust Litigation defendants in patent markets has reduced  
 3 competition and resulted in supracompetitive royalties. In particular, this information is relevant to  
 4 showing that following VLSI's acquisition of the '303 and '014 patents, it has sought  
 5 supracompetitive royalties, which Intel alleges are a result of the anticompetitive conduct at issue in  
 6 the Antitrust Litigation. Indeed, the court's order in the Antitrust Litigation makes clear that Apple  
 7 and Intel should seek leave to include such information in an amended complaint. *See* 3:19-cv-  
 8 07651-EMC, ECF No. 230 at 26 n.9. Accordingly, disclosure of these documents would be  
 9 consistent with Ninth Circuit precedent favoring disclosure to meet the needs of parties in pending  
 10 litigation. *See Beckman*, 966 F.2d at 476; *Foltz*, 331 F.3d at 1131; *CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 204-206 (N.D. Cal. 2009) (allowing the plaintiff to use confidential material  
 11 produced by the defendant to pursue claims against the defendant in state court).

13       **Second**, VLSI's confidentiality interests in the documents will be maintained by restricting  
 14 access to outside counsel in the Antitrust Litigation subject to the terms of the Protective Order in  
 15 this litigation and filing the confidential portions of Apple and Intel's second amended complaint  
 16 under seal. Purchase price and settlement amounts are considered trade secret information. *See*,  
 17 *e.g.*, *Elec. Arts, Inc. v. U.S. Dist. Court for the N. Dist. of Cal.*, 298 Fed. App'x 568, 569 (9th Cir.  
 18 2008) (pricing terms, royalty rates, guaranteed minimum payment terms of licensing agreement  
 19 constituted trade secret); *Powertech Tec., Inc., v. Tessera, Inc.*, No. C 11-6121 CW, 2012 U.S. Dist.  
 20 LEXIS 75831, at \*5 (N.D. Cal. May 31, 2012) (compelling reasons to seal license agreement). In  
 21 the Antitrust Litigation, the court has previously granted sealing requests relating to information  
 22 about Intel's license and/or patent purchase agreements with third parties and information about  
 23 negotiations between either Intel or Apple and one or more defendants or non-parties contained in  
 24 the original and amended complaints. *See, e.g.*, 3:19-cv-07651-EMC, ECF No. 54 at 1; *id.*, ECF No.  
 25 193 at 1; *id.*, ECF No. 215 at 1. That court has also previously sealed information about damages  
 26 demands that a defendant in the Antitrust Litigation regards as confidential. *See* 3:19-cv-07651-  
 27 EMC, ECF No. 193 at 1. Moreover, the January 6, 2021 ruling in the Antitrust Litigation  
 28 specifically notes that Apple and Intel could seek relief from the protective order in other litigations

1 “so that they [Apple and Intel] could make a filing under seal in this case,” i.e., the Antitrust  
 2 Litigation. 3:19-cv-07651-EMC, ECF No. 230 at 26 n.9.

3 The Court should grant relief from the Protective Order to allow Intel to include (under seal)  
 4 the information described above in their second amended complaint in the Antitrust Litigation. Intel  
 5 respectfully requests that the Court do so by January 29, 2021, in advance of the February 5, 2021  
 6 deadline for filing a second amended complaint in the Antitrust Litigation.

7 Intel first contacted VLSI to request its agreement to this request on January 14 but was  
 8 unable to obtain the agreement of VLSI. Declaration of Mark D. Selwyn, ¶ 2. Intel and VLSI met  
 9 and conferred on January 22, 2021 and were unable to reach agreement. *Id.*, ¶ 3.

10 DATED: January 22, 2021

11 Respectfully submitted,

12 WILMER CUTLER PICKERING  
 13 HALE AND DORR LLP

14 /s/ Mark D. Selwyn  
 15 Mark D. Selwyn (SBN 244180)  
 16 mark.selwyn@wilmerhale.com  
 2600 El Camino Real, Suite 400  
 17 Palo Alto, CA 94306  
 Telephone: (650) 858-6000  
 Fax: (650) 858-6100

18 *Attorneys for Defendant Intel Corporation*

## **CERTIFICATE OF SERVICE**

On this 22nd day of January 2021, I hereby certify that I caused the foregoing document entitled Intel Corporation's Administrative Motion for Relief from Protective Order to be filed via the court's CM/ECF system, which shall send notice to the counsel of record for the parties.

DATED: January 22, 2021

WILMER CUTLER PICKERING  
HALE AND DORR LLP

/s/ Mark D. Selwyn

Mark D. Selwyn (SBN 244180)  
mark.selwyn@wilmerhale.com  
2600 El Camino Real, Suite 400  
Palo Alto, CA 94306  
Telephone: (650) 858-6000  
Fax: (650) 858-6100

*Attorneys for Defendant Intel Corporation*